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July 8, 2014

Via E-Filing

Gary Shinners Executive Secretary National Labor Relations Board 1099 14th Street, NW Washington, DC 20570-0001

Re:

Bloomingdale's, Inc. and Fatemeh Johnmohammadi

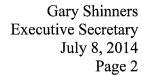
NLRB Case No. 31-CA-071281

Dear Mr. Shinners:

Pursuant to the Board's decision in *Reliant Energy*, 339 NLRB 66 (2003), Respondent Bloomingdale's, Inc. respectfully calls to the Board's attention pertinent and significant new authority which was issued after the Administrative Law Judge's decision and the transfer of this case to the Board: *Fatemeh Johnmohammadi v. Bloomingdale's*, *Inc.*, 2014 U.S.App.LEXIS 11743 (9th Cir. Jun. 23, 2014). This decision upheld the district court's determination that Charging Party in the present case voluntarily entered into a valid, written arbitration agreement with Bloomingdale's which, under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, "must be enforced according to its terms." It also rejected the arguments of the General Counsel and Charging Party that Bloomingdale's arbitration agreement violates the Norris LaGuardia Act, National Labor Relations Act, and/or Board's decision in *D.R. Horton, Inc.*, 357 NLRB No. 184 (2012).

The Ninth's Circuit's decision is applicable to the following propositions presented in Bloomingdale's brief in support of its exceptions to part of the ALJ's decision ("EXC") and its combined answering brief to the exceptions of the General Counsel and Charging Party ("AB"):

- 1. Bloomingdale's arbitration agreement is voluntary and enforceable: AB 5:9, 21; 6:1, 11; 23:2.
- 2. Bloomingdale's arbitration agreement is lawful: AB 22:19.





- 3. Bloomingdale's arbitration agreement is voluntary because employees have the right to opt out of the agreement: AB 10:11; 13:16; 14:9; 20:8; 30:17.
- 4. The class action waiver in Bloomingdale's arbitration agreement is lawful: AB 20:3; 25:18; 34:22.
- 5. No threats or reprisals were made to Charging Party to compel her to accept Bloomingdale's arbitration agreement: AB 30:2.
- 6. Employees were not given a benefit to induce them to agree to Bloomingdale's arbitration agreement: AB 20:25; 21:3, fn 6, l. 8.
- 7. Because Bloomingdale's arbitration agreement is not mandatory, *D.R. Horton* does not apply: AB 3:6, 11; 6:11; 7:17; 10:2; 16:18.
- 8. The Norris LaGuardia Act is not applicable to Bloomingdale's arbitration agreement: AB 18:15; 35:1.
- 9. Bloomingdale's motion to stay pending the outcome of the civil action should have been granted: AB 34:4; EXC 5:15; 7:13; 18:23; 28:8; 29:2.

Word count: 344

Respectfully submitted,

JACKSON LEWIS P.C.

David S. Bradshaw

Attorneys for BLOOMINGDALE'S, INC.

DSB:gkb

cc: See attached proof of service

CERTIFICATE OF SERVICE

I hereby certify:

I am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within action; my business address is Jackson Lewis P.C., 801 K Street, Suite 2300, Sacramento, California 95814.

On July 8, 2014, I served the within:

BLOOMINGDALE'S, INC.'S *RELIANT* NOTICE OF PERTINENT AND SIGNIFICANT NEW AUTHORITY

on the parties and interested persons in said proceeding:

X by forwarding a true and correct copy thereof electronically from e-mail address baumg@jacksonlewis.com between approximately 1:00 p.m. and 1:30 p.m. to the persons at the e-mail addresses set forth below.

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Additionally, on July 8, 2014, I will electronically file the above-mentioned document with the Office of the Executive Secretary.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct,

Executed on this day of July, 2014 at Sacramento, California.

Gail Kristine Baum